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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/674,480	09/30/2003	Scott I. Klein	USA2797USCNT	4684
5487	7590 04/28/2005		EXAMINER	
ROSS J. OEHLER AVENTIS PHARMACEUTICALS INC.			CHANG, CELIA C	
ROUTE 202			ART UNIT	PAPER NUMBER
MAIL CODE: D303A BRIDGEWATER, NJ 08807			1625	×
	,		DATE MAILED: 04/28/2005	

Please find below and/or attached an Office communication concerning this application or proceeding.

			1,
	Application No.	Applicant(s)	
	10/674,480	KLEIN ET AL.	
Office Action Summary	Examiner	Art Unit	
	Celia Chang	1625	•
The MAILING DATE of this communication ap Period for Reply	pears on the cover sheet with the o	orrespondence address	
A SHORTENED STATUTORY PERIOD FOR REPL THE MAILING DATE OF THIS COMMUNICATION. - Extensions of time may be available under the provisions of 37 CFR 1. after SIX (6) MONTHS from the mailing date of this communication. - If the period for reply specified above is less than thirty (30) days, a replication of the period for reply is specified above, the maximum statutory period. - Failure to reply within the set or extended period for reply will, by statuty. - Any reply received by the Office later than three months after the mailing earned patent term adjustment. See 37 CFR 1.704(b).	136(a). In no event, however, may a reply be tirely within the statutory minimum of thirty (30) day will apply and will expire SIX (6) MONTHS from the cause the application to become ABANDONE	nely filed /s will be considered timely. In the mailing date of this communication. ED (35 U.S.C. § 133).	
Status			
1) Responsive to communication(s) filed on 13.	lanuary 2005.		
2a) This action is FINAL . 2b) ⊠ Thi	s action is non-final.	•	
3) Since this application is in condition for allows closed in accordance with the practice under			
Disposition of Claims			
4) Claim(s) 1-22 and 29-41 is/are pending in the 4a) Of the above claim(s) is/are withdra 5) Claim(s) is/are allowed. 6) Claim(s) 1-22 and 29-41 is/are rejected. 7) Claim(s) is/are objected to. 8) Claim(s) are subject to restriction and/or the control of the control	awn from consideration.		
Application Papers			
9) The specification is objected to by the Examin			
10)☐ The drawing(s) filed on is/are: a)☐ acc	· · · · · · · · · · · · · · · · · · ·		
Applicant may not request that any objection to the	• • • • • • • • • • • • • • • • • • • •	• •	
Replacement drawing sheet(s) including the correct 11) The oath or declaration is objected to by the E	· = · · ·	• • • • • • • • • • • • • • • • • • • •	
Priority under 35 U.S.C. § 119	•		
12) Acknowledgment is made of a claim for foreign a) All b) Some * c) None of: 1. Certified copies of the priority document 2. Certified copies of the priority document 3. Copies of the certified copies of the priority document application from the International Bureat * See the attached detailed Office action for a list	ts have been received. Its have been received in Applicationity documents have been received in Application (PCT Rule 17.2(a)).	ion No ed in this National Stage	
Attachment(s)			
1) Notice of References Cited (PTO-892) 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)	4) 🔲 Interview Summary Paper No(s)/Mail Da	(PTO-413)	
 Notice of Draftsperson's Patent Drawing Review (PTO-948) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08 Paper No(s)/Mail Date 		eate Patent Application (PTO-152)	

DETAILED ACTION

- 1. Applicant's election with traverse of group II, species of example 2 at page 48 in the reply filed on Oct. 6, 2004 and Jan 13, 2005 are acknowledged. The traversal is on the ground(s) that the examiner did not show that the claims are either
 - (A) lack substantial structural feature; or
 - (B) lack common utility.

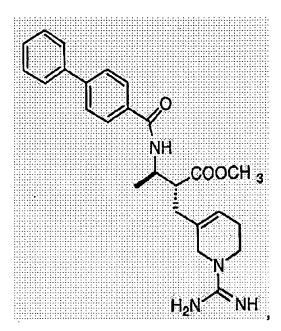
This is not found persuasive because applicants' attention is drawn to the restriction (office action 06/09/04) wherein on page 2, it was clearly delineated that the compounds lacks common core with such diversified structural different inclusion. On page 3, two US patents were recited with anticipatory compounds having different utility, i.e. compounds when Z3 is heteroaryl core, they have anti-inflammatory use (US 4,916,145), while compounds when Z3 is aryl core, they have fibrinogen receptor antagonistic use (US 5,648,368). The issue parent claims (US 6,277,865) when Z3 is piperidine, the compounds have Factor Xa inhibiting use. Therefore, the independent and distinct "core" corresponding to independent and distinct utility was established by the art of record. Applicants provided no factual evidence only argument that all compounds as claimed are equivalent is insufficient to support propriety of Markush grouping. It has been clearly established by the case law that establishing Markush equivalency must not be mere assertion by applicants but must be by "art recognized" equivalency. See In re Dillon 13 USPQ 1337 at 1348 and In re Ruff 118 USPQ 340 at 343.

The requirement is still deemed proper and is therefore made FINAL.

Claims 23-38 have been canceled. Claims 1-22, 29-41 is prosecuted to the extend of Z3 is dihydropyridine with example 2:

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as the elected species for which examination will be made.

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 1-22, 29-41 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 27 and 23 of prior U.S. Patent No. 6,277,865 (parent). This is a double patenting rejection.

Please note that claim 27 is the elected species in a single species claim. Therefore, the elected species is under statutory double patenting. Per MPEP803.02, it was clearly instructed that "If on examination the elected species is found to be anticipated or rendered obvious by prior art, the Markush-type claim and claims to the elected species shall be rejected, and claims to the nonelected species would be held withdrawn from further consideration. As in the prevailing practice, a second action on the rejected claims would be made final."

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3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Celia Chang whose telephone number is 571-272-0679. The examiner can normally be reached on Monday through Thursday from 8:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cecilia Tsang, can be reached on 571-272-0562. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

OACS/Chang Apr. 25, 2005

Celia Chang Primary Examiner Art Unit 1625